IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 23RD JULY 2007 / 1ST SRAVANA 1929

Crl.Rev.Pet.No. 2708 of 2007()

CMP.978/2007 of JUDL. MAGISTRATE OF FIRST CLASS, PEERUMEDU
CC.344/05 OF JFCM-I, PEERUMEDU

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REVN. PETITIONER: PETITIONERS/ACCUSED 1 TO 6:

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1. RAJENDRAPRASAD,
   MANAGER, TYFORD ESTATE, ELAPPARA.

2. SOUNDER RAJAN,
   ASSISTANT MANAGER, TYFORD ESTATE, ELAPPARA.

3. PERIYASWAMI, S/O. SHANMUKHAM,
   FAIRFIELD DIVISION LAYAM, TYFORD ESTATE,ELAPPARA.

4. RAJU @ YOHANNAN, S/O. THOMAS,
   PAYYAPPALLIL VEEDU, FAIRFIELD DIVISION,PUTHUVAL,
   TYFORD ESTATE, ELAPPARA.

5. SUBBAYYA, S/O. MASANAM,
   FAIRFIELD DIVISION LAYAM, TYFORD ESTATE,
   ELAPPARA VILLAGE.

6. PHILIP, S/O. SUBBAYYA,
   FAIRFIELD DIVISION LAYAM, TYFORD ESTATE,
   ELAPPARA VILLAGE.

BY ADV. SRI.T.A.UNNIKRISHNAN
SRI.SABU THOMAS
SRI.P.P.BIJU

RESPONDENTS: RESPONDENTS/COMPLAINANT:

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1. STATE OF KERALA,
   REP. BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA,
   ERNAKULAM.

2. SARASAMMA, W/O. THAMPI,
   GURUMANDIRAM VEEDU, ELAPPARA KARA,
   ELAPPARA VILLAGE.

BY PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 23/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 2708 OF 2007

Dated this the 23rd day of July, 2007

O R D E R

The revision petitioners are the accused in C.C.No.344/2005 on the file of the JFCM-I, Peermade. The said case is one instituted on a private complaint alleging offences punishable under sections 452, 325 and 427 read with section 34 IPC. From the same incident, the Peermade police had registered a crime and filed a charge sheet which, after cognizance, was registered as C.C.No.217/2004 before the same court. Learned counsel for the petitioners also conceded that both the above cases cannot be jointly tried or clubbed together by invoking section 210 Cr.P.C. However, there are some witnesses, who are common to both cases. Those common witnesses were also separately examined in each of the cases which were also separately tried by the Magistrate. After the conclusion of the prosecution evidence, the petitioners filed CMP No.978/2007 before the Magistrate for permitting the petitioners to read the evidence of the common witnesses examined in one case as evidence in the other case. The said petition was dismissed by the

learned Magistrate as per the impugned order dated 4.7.2007.

2. Eventhough the learned counsel appearing for the revision petitioners placed reliance on the decision reported in ***Harjinder Singh Vs. State of Punjab*** [AIR 1985 SC 404] to contend that where the two cases are not clubbed together but are separately tried, the common witnesses need be examined only in one case and their evidence can be read in both the cases, I am not persuaded to agree with the above submission. The facts of the case reported in ***Harjinder Singh Vs. State of Punjab*** [AIR 1985 SC 404] were singularly unique and the said decision cannot be pressed into service by the revision petitioners to enable the court to examine the common witnesses in one case only and treat their evidence as evidence in the other case. In the case on hand, the common witnesses were also examined separately. So, the Magistrate was fully justified in dismissing the petition.

3. The learned counsel for the revision petitioners submitted that the petitioners did not get an opportunity to confront those common witnesses with their own statements in the case in which they were examined first. This, of course, is a right available to the petitioners under section 145 of the Evidence Act.

Hence, before taking the case for arguments, the learned Magistrate shall permit the revision petitioners to confront the depositions of the common witnesses examined in the first case for the purpose of eliciting contradictions, if any, in the case in which they were examined subsequently by allowing them to be recalled for the purpose. Subject to this right of the petitioners, this revision is disposed of.

(V. RAMKUMAR, JUDGE)

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